

***United States Court of Appeals
for the Second Circuit***



AMICUS BRIEF

77-6049

IN THE
United States Court of Appeals
FOR THE SECOND CIRCUIT

B
P/S

SECRETARY OF INTERIOR *et al.*,
NATIONAL OCEAN INDUSTRIES
ASSOCIATION *et al.*,

Appellants,

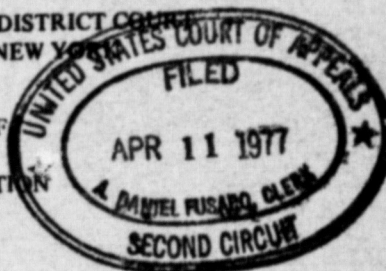
v.

COUNTY OF SUFFOLK *et al.*,

Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK

AMICUS CURIAE BRIEF
OF THE
AMERICAN GAS ASSOCIATION

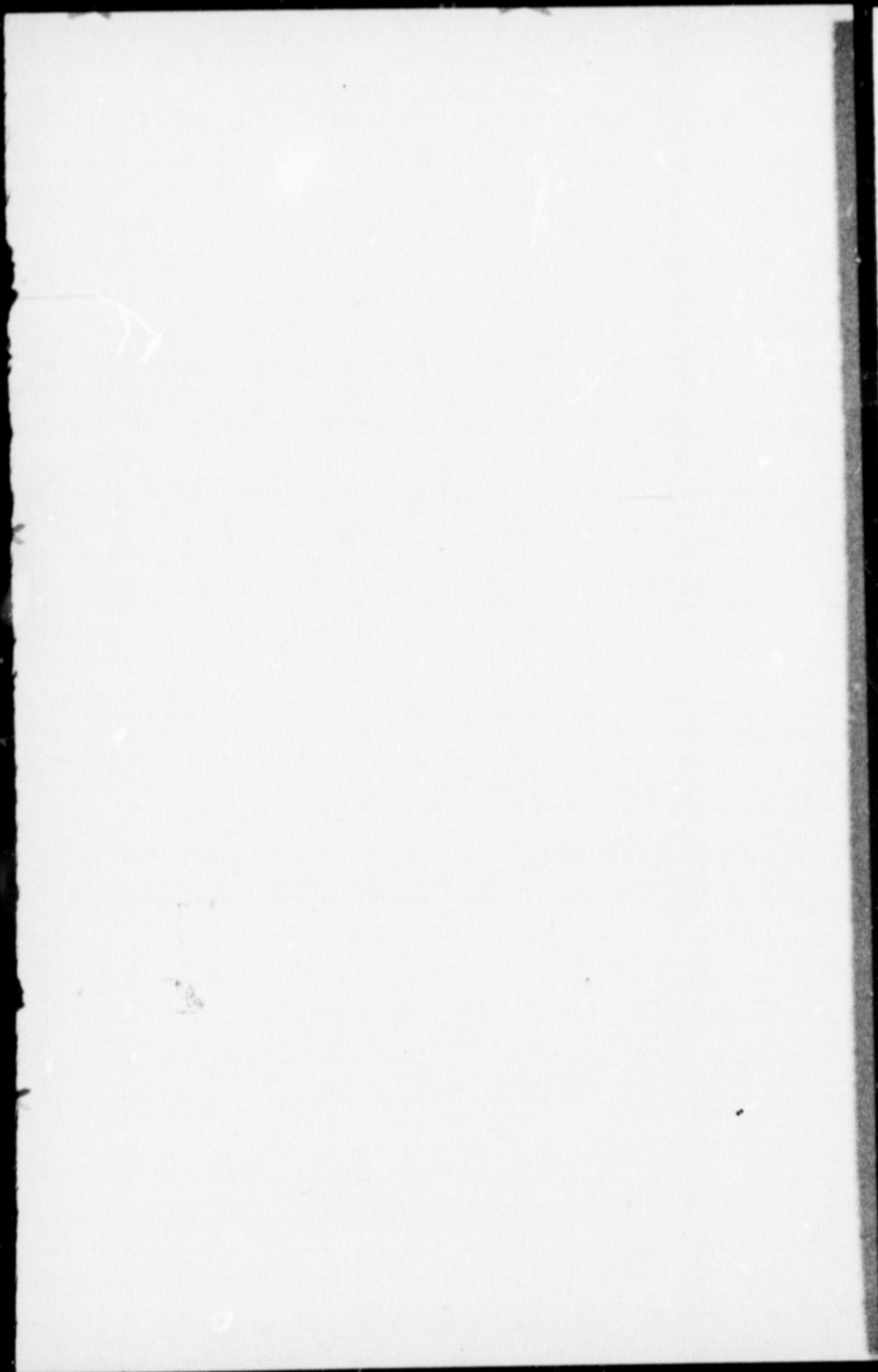


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IN THE
United States Court of Appeals
FOR THE SECOND CIRCUIT

No. 77-6049

SECRETARY OF INTERIOR *et al.*,
NATIONAL OCEAN INDUSTRIES
ASSOCIATION *et al.*,
Appellants,

v.

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AMICUS CURIAE BRIEF
OF THE
AMERICAN GAS ASSOCIATION

I. INTRODUCTORY STATEMENT

This brief *amicus curiae* is presented on behalf of the American Gas Association (A.G.A.), a non-stock, non-profit organization incorporated under the laws of the State of Delaware. It is the national trade association for approximately 300 member companies providing natural gas distribution and transmission services to 160 million consumers in all 50 states. The member

companies of the A.G.A. provide approximately 85 percent of the nation's natural gas utility sales. Natural gas alone supplies 43 percent of the energy consumed by residential and commercial establishments and over 40 percent of the energy used by U.S. industry.

A.G.A. believes that further delays in leasing outer-continental shelf (OCS) lands in the Baltimore Canyon area will provide disastrous to the nation's current energy needs; will cause severe dislocation to the economy in both the Northeast and the United States as a whole; and will adversely affect our national security and balance of payments. Rapid development of the Baltimore Canyon OCS lands in not only environmentally safe, it is also absolutely essential.

Accordingly, A.G.A. urges the Court to reverse the District Court's decision, vacate the stay, and dismiss the petition of the County of Suffolk et al. herein with prejudice.

In the alternative, we urge the Court to totally separate gas from its decision in this case. Gas is environmentally superior to all alternative fuels. It is non-toxic and non-polluting. It should be treated separately, and accordingly, we urge the Court to reverse the District Court's decision, vacate the stay, and dismiss the petition of the County of Suffolk et al. with prejudice as to gas development alone.

II. STATEMENT OF THE CASE

On August 13, 1976, the U.S. District Court for the Eastern District of New York issued a preliminary injunction against Lease Sale 40 on the Outer-Continental Shelf. This sale was to encompass tracts in

the Baltimore Canyon area off the coastline of Delaware and New Jersey. The Court acted on the ground that the Secretary of Interior had failed to comply with the National Environmental Policy Act of 1969 (NEPA)¹ in deciding to proceed with Lease Sale 40. According to the Court, the Secretary had failed to analyze the effect of state and municipal restrictions on pipelines and related onshore facilities. Without such analysis, the Court concluded, the environmental impact of the sale could not be realistically appraised.

In its final Memorandum and Order of February 1977, the Court declared that there must be a recession of Lease Sale 40 on the grounds that the Secretary:

- 1) Ignored practical effects of local government regulation in the NEPA documents;
- 2) Failed to gauge environmental impact of specific probable pipeline routes from the Outer-Continental Shelf;
- 3) Greatly overstated peak oil and gas production and substantially understated the cost of production for Sale 40;
- 4) Failed to consider impact of tract selection on feasibility of pipeline siting; and
- 5) Did not evaluate the alternative of separating exploration from production leasing.

On March 4, 1977, Appellants National Ocean Industries Association (NOIA) and the Federal Government filed notices of appeal with respect to Judge Weinstein's February ruling and have obtained a ruling from this Court that their appeal should be set for expeditious hearing.

¹42 U.S.C. Sec. 4321 *et seq.*

III. ARGUMENT

The American Gas Association respectfully submits:

1. TO DELAY LEASE SALE 40 WOULD SERIOUSLY EXACERBATE THE NATION- WIDE GAS SHORTAGE

Judge Weinstein's decision has stopped the development of oil and gas resources in the Baltimore Canyon, an area which contains large volumes of urgently needed natural gas. According to the Potential Gas Committee's 1972 estimates, the outer-continental shelf lands off the Atlantic Coast may hold gas reserves of thirty-five trillion cubic feet.² This is enough gas to satisfy total U.S. needs for one and one-half years at the average current consumption rate of twenty trillion cubic feet (Tcf) per year.

U.S. proved reserves of natural gas, that is, known deposits of natural gas which can be economically produced with existing technology, have declined steadily since 1967 with the single exception of 1970, when Alaskan North Slope supplies were added.³

²The Potential Gas Agency, Potential Supply of Natural Gas in the United States, P.A. (Colorado School of Mines, November 1973). It is noted that other estimates suggest Atlantic OCS Reserves in an "extreme range" of probability, of 5 to 14 trillion cubic feet (Tcf). (See: Geological Estimates of Undiscovered Recoverable Oil and Gas Resources in the United States, Geological Survey Cir. 725, U.S. Department of Interior.)

³American Gas Association, RESERVES OF CRUDE OIL, NATURAL GAS IN THE UNITED STATES AND CANADA as of DECEMBER 31, 1975, P. 124, 196 (1976).

Production also has declined since 1972.⁴ Such decreases in reserves and production can have a disastrous nationwide effect, for example, the widespread gas shortages that developed this past winter.

2. IT IS ESSENTIAL THAT THE NORTHEAST RECEIVE THE ECONOMIC AND OTHER BENEFITS OF NEARBY OIL AND GAS PRODUCTION

As bad as these temporary, critical, nationwide shortages are, however, the Northeastern states are potentially the greatest losers from further delays in the development of the Baltimore Canyon area. According to the Coalition of Northeastern Governors:

"By traditional standards, the Northeast region of the nation has fallen behind the rest of the country in economic performance. Shifts in the national economy have put the older industrial areas of the United States at a disadvantage."⁵

Energy costs play a substantial role in creating the unfavorable economic conditions that prevail in the Northeast. The Governors have recognized that there exists a correlation between the fact that "eighty percent of our total energy comes from petroleum which must be secured outside this region" and the fact that "the Northeast pays 50 percent above national

⁴RESERVES OF CRUDE OIL, NATURAL GAS IN THE UNITED STATES AND CANADA as of DECEMBER 31, *supra*.

⁵Coalition of Northeast Governors, PROPOSAL FOR A REGIONAL ENERGY DEVELOPMENT CORPORATION, p. 1 (Saratoga Springs, N.Y., November 1976).

average for commercial energy. It pays twice as much for energy as is paid in other regions for the same energy."⁶

Development of the Baltimore Canyon would help remedy the energy problems of the Northeast by providing a nearby oil and gas source without some of the transportation expenses that assume importance in the cost of gas and oil brought in from distant parts of the U.S. or abroad. But regardless of the regional effect on prices, the Baltimore Canyon sale would bring more gas on line, and given the gas curtailments of the recent past, the "increased availability of this clean-burning premium fuel from the OCS would be of greater importance than price savings to consumers."⁷

The frightening importance of energy in our lives was irrefutably demonstrated this past winter when gas supply shortages caused a loss of more than 15,249,000 mandays of work. If we assume a modest average of \$200 per week in wages, this represents a loss of some \$610 million to our nation's economy. (See: *New York Times*, March 20, 1977, p. F-1). Such job losses, from the failure to develop our essential outer-continental and other gas reserves, simply cannot be allowed to continue.

⁶ PROPOSAL FOR A REGIONAL ENERGY DEVELOPMENT CORPORATION, *supra*.

⁷ COASTAL EFFECTS OF OFFSHORE ENERGY SYSTEMS, p. 171-172, Office of Technology Assessment, U.S. Congress (November 1976).

3. THE DEVELOPMENT OF OFFSHORE GAS RESOURCES PROTECTS OUR NATIONAL SECURITY BY PREVENTING PRICE MANIPULATIONS AND POSSIBLE CUTOFF OF FOREIGN SUPPLIES AND, IN ADDITION, PROTECTS OUR BALANCE OF PAYMENTS POSITION

Atlantic Coastal gas resources belong to the United States. Thus, they are far superior from a national security standpoint to foreign sources. Foreign energy supplies are subject to arbitrary and unannounced price manipulations, dislocations, or total cessation.

In addition, offshore gas creates no drain on our nation's balance of payments which would otherwise result from turning to foreign energy sources, such as imported oil. For each one trillion cubic feet (Tcf) of gas recovered from the Baltimore Canyon, we can save some \$2 billion in foreign exchange payments for imported oil based on the current price per barrel of foreign imported crude.⁸

4. THE DISTRICT COURT ERRONEOUSLY INTERFERED WITH THE SECRETARY OF THE INTERIOR'S PERFORMANCE OF HIS STATUTORY DUTIES

Appellees contended below that the Secretary failed to evaluate the land-fall impact of offshore development; and argued that the Secretary's analysis of the

⁸One barrel of oil contains the Btu equivalent of approximately 5.8 Mcf of gas. Current market price per barrel of foreign imported crude is approximately \$13.00.

costs of development were erroneous. Notwithstanding Appellee's lack of standing to raise these issues by reason of their failure to raise them in the proceedings and hearings on the Draft Environmental Impact Statement before the Secretary, the Court below accepted the petition, granted the stay, and accepted new evidence on both development costs and the land-fall impact of the proposed development.

The American Gas Association respectfully submits that the Court below erred in allowing petitioners to raise issues not previously presented to the statutorily designated officers for determination. (See: *Myer v. Bethlehem Shipbuilding Corp., Ltd.* 303 U.S. 41, 49-50, 82 L.Ed. 638, 644 (1938)).

In any event, the record before the Secretary was more than sufficient to insure that adequate consideration would be given to the environmental impact of the onshore development prior to undertaking any actual onshore activity. Indeed, onshore activity cannot be fully predicted when even the location of possible facilities is still unknown. Nevertheless, prior to the Secretary's study, the Council on Environmental Quality had conducted extensive public hearings on the environmental impacts of outer-continental shelf development which included a full discussion on issues of onshore development.⁹

Finally, before onshore development can occur, either an oil pipeline or a gas pipeline, or both, will be required. Both such facilities require federal agency certification. See for example, the duties of the Federal

⁹See: OCS Oil and Gas—An Environmental Assessment; A Report to the President by the Council on Environmental Quality; (April 1974).

Power Commission, in natural gas matters (15 U.S.C. 717, *et seq.*) The agency must itself expressly consider the particular environmental issues of which Appellee (petitioner below) complains, prior to issuance of any certificate for construction of such facilities.

All of this underscores that the Court below simply substituted its judgment for that of the agency charged in law with the responsibility. This is clearly erroneous. (*Kleppe v. Sierra Club*, ____ U.S. ____, 49 L.Ed.2d 576, 590, 96 S. Ct. ____) As Mr. Justice Powell states in a key footnote to that opinion:

Neither the statute nor its legislative history contemplates that a court should substitute its judgment for that of the agency as to the environmental consequences of its actions. See: *Scenic Hudson Preservation Conference v. FPC*, 453 F.2d 463, 481 (CA2 1971), cert. denied, 407 U.S. 926, 32 L.Ed.2d 813, 92 S. Ct. 2453 (1972). The only role for a court is to insure that the agency has taken a "hard look" at environmental consequences; it cannot 'interject itself within the area of discretion of the executive as to the choice of the action to be taken'. *Natural Resources Defense Council v. Morton*, 458 F.2d 827, 838, 418 U.S. App. D.C. 5, 16 (1972).

5. GAS DEVELOPMENT OF THE OUTER-CONTINENTAL SHELF WILL NOT SIGNIFICANTLY DAMAGE THE ENVIRONMENT

It is well recognized that gas development on the Outer-Continental Shelf will not significantly damage the environment. Indeed, the Office of Technology Assessment, U.S. Congress, reported only three months ago that:

"No significant damage to the environment or changes in the patterns of life in either New Jersey or Delaware is anticipated during operation of the three systems (OCS oil and gas development, a deepwater port, and a floating nuclear power plant) at presently projected levels." (COASTAL EFFECTS OF OFFSHORE ENERGY SYSTEMS, *supra*, at p. 11) (emphasis added).

There can be no mistaking the fact that tanker traffic, by which the Atlantic coastal states receive over 90 percent of their petroleum and petroleum products, is substantially more polluting than production on the Outer-Continental Shelf. The recent rash of "tanker" accidents merely underscores the dangers to our marine environment which increased tanker traffic from the OPEC nations represents.

In contrast, gas development on the Outer-Continental Shelf would not significantly damage the environment or disrupt life in the coastal states. Thus, even if the Judge below is justified in his conclusions as to onshore ramifications of offshore oil development, there is *no* justification for impeding the development of the gaseous reserves. Indeed, Judge Weinstein, himself, seems to recognize this in that his criticism is directed to the oil line problems, and not those associated with development of the gas resources.

Accordingly, A.G.A. submits the Appellees claims that the Secretary's Environmental Impact Statement is legally or factually deficient, are without merit. Such defects as may exist are not such as to warrant the Court's intrusion into the powers conferred by the Congress on the Secretary. Even if the Court should find some difficulty in the Environmental Impact Statement as to potential oil development,¹⁰ the Court

¹⁰We note, of course, our firm belief that there is no such difficulty.

should recognize that there is no justification for setting the Environmental Impact Statement aside as it applies to development of the potential gas resources.

IV. CONCLUSION

The American Gas Association firmly believes that:

- To delay Lease Sale 40 would seriously exacerbate the nationwide natural gas shortage.
- It is essential that the Northeast receive the economic and other benefits of nearby oil and gas production, including protection against further job losses due to gas shortages.
- The development of offshore gas resources protects our national security by preventing price manipulations and possible cutoff of foreign supplies, and in addition protects our balance of payments position.
- The District Court erroneously interfered with the Secretary of the Interior's performance of his statutory duties; and
- Gas development on the outer-continental shelf will not significantly damage the environment.

WHEREFORE, A.G.A. respectfully urges the Court to:

- Reverse the District Court's decision and order; vacate the stay; and, dismiss the petition of the County of Suffolk et al. herein, with prejudice; or
- In the alternative, we urge the Court to totally separate non-polluting, non-toxic natural gas from its decision and order, vacate the stay, and dismiss the petition of the County of Suffolk et al. with prejudice but solely as to gas development.

— And to provide such other relief as the Court
deems appropriate.

Respectfully submitted,

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Dated: March 24, 1977

UNITED STATES COURT OF APPEALS
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SECRETARY OF INTERIOR *et al.*,
Appellants,
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ASSOCIATION *et al.*,
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v.

COUNTY OF SUFFOLK *et al.*,
Appellees.

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing Brief of the American Gas Association as *Amicus Curiae* upon all parties of record in this case who are listed in attached Service List, in accordance with rules of the Federal Rules of Appellate Procedure and local rules of the U.S. Court of Appeals for the Second Circuit.

Dated at Arlington, Virginia this 24th day of March, 1977.

Respectfully submitted,

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77-6049

United States Court of Appeals

FOR THE SECOND CIRCUIT

SECRETARY OF THE INTERIOR, *et al.*,
Appellants,

—against—

COUNTY OF SUFFOLK, *et al.*,
Appellees.

*On Appeal from the United States District Court
For the Eastern District of New York*

AMICI CURIAE BRIEF OF EXXON CORPORATION, GULF OIL CORPORATION, MOBIL OIL CORPORATION, AND SHELL OIL COMPANY

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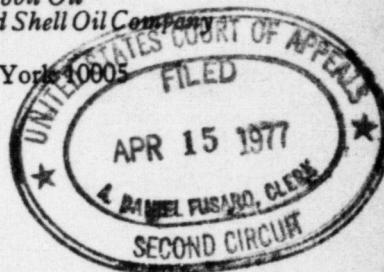


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AMICI CURIAE BRIEF OF EXXON CORPORATION, GULF OIL CORPORATION, MOBIL OIL CORPORATION AND SHELL OIL COMPANY

Introduction

Pursuant to Federal Rule of Appellate Procedure 29, Exxon Corporation, Gulf Oil Corporation, Mobil Oil Corporation and Shell Oil Company, having concurrently moved for leave to participate as *amici curiae*,* conditionally submit this Brief in support of Appellants' appeal seeking to reverse the order of the United States District Court for the Eastern District of New York.

* For the convenience of the Court, the Appendix hereto contains a copy of the affidavits of Robert L. Clare, Jr., C. C. Garvin, Chairman of the Board and Chief Executive Officer of Exxon Corporation, Lewis A. Ramsey, President of Gulf Energy & Minerals Company-U.S., William P. Tavoulareas, President of Mobil Oil Corporation and John F. Bookout, President and Chief Executive Officer of Shell Oil Company in support of the motion.

Interests of Amici Curiae

Exxon, Gulf, Mobil and Shell are four of the largest integrated suppliers of hydrocarbon energy in the world. Each of the companies is vitally interested in expanding the availability of domestic supplies of oil and natural gas, recognizing that only through greater development of domestic resources can they adequately meet duties to customers, both industrial and consumer, and to the stated national interest of reducing dependency on imported oil and petroleum products. It is recognized that the decision to accelerate development of new supplies of energy must be tempered by the national commitment to protect the environment adequately. However, adequately protecting the environment is not an alternative to extracting fossil fuels from the earth—both can and must be done.

The United States onshore area being one of the most thoroughly explored oil provinces in the world, the outer continental shelf represents the frontier for future development of domestic energy supplies. The concern of the *amici curiae* with development of outer continental shelf resources led to participation in all of the previous outer continental shelf leaseings, including those in the Gulf of Mexico and Alaska. Successful exploration and production from the outer continental shelf is now helping to supply the energy needs of the United States.

Preparation for bidding on tracts in the Sale 40 area began long before the sale on August 17, 1976. As early as 1964, Exxon began collecting and analyzing geological and geophysical data. Its efforts prior to the sale resulted in expenditures of more than \$11 million. Shell spent at least \$10.5 million for extensive seismic surveys and testing in the Mid-Atlantic area in anticipation of bidding for tracts in the Sale 40 area. Mobil and Gulf have undertaken similar costly steps in preparation for their bids.

All four companies were successful bidders at the sale. Exxon obtained leases on 30 of the 154 tracts offered and has paid \$343 million in bonuses as well as advances on the first year's rentals of \$500,000. Gulf, together with seven other companies, owns leases on 10 tracts for which more than \$105 million in bonuses was paid. Mobil, together with eight other companies in different bidding percentages, acquired leases on eight tracts, having jointly paid bonuses of more than \$274 million. Shell and seven co-bidders were successful bidders in different combinations on 12 tracts and paid \$183,400,000 in bonuses. Together these bonuses amount to approximately \$900 million of the total of \$1.1 billion paid by all successful bidders.

Recognizing the urgency to proceed with exploration of tracts on which they were the successful bidders, Exxon, Gulf, Mobil and Shell commenced preparation for exploration shortly after the August 17, 1976 sale. In preparation for exploration, significant financial and manpower commitments have been made. Exxon, for example, has made arrangements to obtain exploratory drilling rigs for use in the area. The lessees have acquired real estate and other facilities to support their exploratory operations. Exxon's initial financial commitment of \$550,000 for such a facility is not atypical.

The effects of Judge Weinstein's order declaring null and void the Sale 40 leases are staggering both to the lessees and the national interest.

The \$1.1 billion in bonus payments by the lessees have been deposited in the United States Treasury pursuant to 43 U.S.C. § 1333. There are substantial questions in this unprecedented situation as to how that money may be returned. While the potential interest upon this \$1.1 billion is significant, of greater importance is the loss or delay in exploring for vitally needed new sources of oil and

natural gas. Furthermore, all bidding strategies and plans developed at great expense have been disclosed and the precise amounts which each of the successful bidders offered for the 93 tracts have been announced. A new sale would be patently unfair to the successful bidders and would destroy the integrity of the secret competitive bidding system required by the Outer Continental Shelf Lands Act.* 43 U.S.C. §§1331 *et seq.*

The effects of the growing energy crisis were vividly and dramatically brought home to the entire nation this past winter. Oil and gas shortages required the closing of businesses and schools. Workers were laid off and growth in the national economy stalled. The impact in human terms of the suffering inflicted on those who had insufficient heat or were denied necessary income is immeasurable.

It is desirable and beneficial for the Court to have before it the views of those who are attempting to respond to the ever increasing demand for energy, and in so doing have committed hundreds of millions of dollars to the acquisition and exploration of tracts in the Sale 40 area. We agree with Secretary of the Interior Andrus that the appeal of Judge Weinstein's order is in the public interest and, therefore, submit this brief *amici curiae* urging reversal.

* Both the District Court's opinion and plaintiffs' briefs below suggest that the losses incurred by the lessees are justifiable in view of the known risks posed by this litigation. That is nonsense. In the light of the stay by this Court of the prior grant of a preliminary injunction and the decision of the Secretary to proceed with the sale, there was no alternative for the bidders from a competitive standpoint but to go forward and bid. One can imagine the public recriminations which would have attached to the refusal by the largest American oil companies to participate in a sale which this Court permitted to go forward because in Judge Van Graafeiland's words, "the national interests looking toward relief of this country's energy crisis will be clearly damaged if the proposed sale is aborted." (No. 76-8369, JA 355)

Prior Proceedings

The process leading to Sale 40 was long and complicated. In January 1974, the President of the United States announced a policy of accelerated leasing of outer continental shelf areas to assist in the national effort to attain energy self-sufficiency. Pursuant to this directive a draft programmatic EIS was prepared. Federal officials met with state governors and public hearings were held. There were further revisions to the draft PEIS which resulted in the publishing of the final PEIS in July 1975. Following an additional period for comment, the Department of the Interior announced its decision to go forward with accelerated leasing of the outer continental shelf.

Specific planning for a possible lease sale began in 1974, and tract nominations were solicited by the Department of the Interior in March 1975. Interested parties, including state and local governments, designated tracts to be withheld from leasing for environmental and other reasons. After an examination of the potential of and hazards associated with various tracts, tentative selections were announced in August 1975. Only 876,750 acres of a possible 6.5 million acres originally designated by the Bureau of Land Management were selected for leasing. A draft EIS for Sale 40 was prepared and public hearings were held, including an extra day ordered by Judge Weinstein. A four-volume final EIS was released to the public in May 1976. On July 16, 1976, a notice of the proposed sale was published in the Federal Register, offering the tracts included in Sale 40 for oil and gas leasing by competitive bidding on August 17. Judge Weinstein's preliminary injunction was stayed by this Court on August 16 and the Supreme Court refused to vacate the stay on August 17. It was only then that the Secretary decided to proceed with Sale 40.

All of this painstaking effort has been brushed aside by the District Court's cancellation of the sale.

ARGUMENT

A. THE DISTRICT COURT ERRED BY SUBSTITUTING ITS JUDGMENT FOR THAT OF THE SECRETARY OF THE INTERIOR

While Judge Weinstein eschews substituting his wisdom for that of the Secretary of the Interior, that is precisely what he has done. First, it appears that Judge Weinstein disagreed with the wisdom of exploiting the energy resources located in the outer continental shelf. For example, Judge Weinstein recites in his preliminary injunction opinion that there is an issue:

“[O]f the wisdom of committing to rapid exploitation of off-shore oil resources while Congress is debating energy and conservation policies. New policies may require saving these non-renewable hydrocarbon resources for future generations.” (Order p. 9, JA 164)*

Later in the opinion he states:

“No doubt many would applaud adoption of sensible alternatives such as inducing the exercise of restraint in our profligate use of energy, while holding these precious non-renewable fossil fuel resources for coming generations when energy may be in even shorter supply than at present.” (*Id.* at p. 31, JA 186)

Judge Weinstein's reaffirmance of his August 13, 1976 memorandum relating to the grant of the preliminary injunction is similarly disturbing because this Court's reversal of the preliminary injunction included the statement that

“... the Programmatic Environmental Impact Statement and the EIS for Sale No. 40 ... contain numerous

* The District Court's preliminary injunction order dated August 13, 1976 is cited herein as “Order”. The District Court's final memorandum and order dated February 17, 1977 is cited herein as “Decision”.

references to the possible lack of State cooperation relative to pipeline location and usage and the alternative use of tankers. An evaluation of these statements measured by the 'practical rule of reason' create some doubt as to the probabilities of plaintiffs' success on the merits." (No. 76-6122, JA 365)

There were no changes in the PEIS and the EIS which this Court evaluated in connection with its reversal of the preliminary injunction on October 14, 1976 and the PEIS and EIS which were before the District Court on the trial of the permanent injunction in January 1977. Nevertheless, Judge Weinstein reaffirmed the text of his August 13, 1976 order and began his opinion on the permanent injunction by stating that

"... the powers of state and municipal authorities to affect the scope of outer continental shelf operations were virtually ignored in deciding to proceed with Lease Sale 40 in its present form." (Decision p. 9, JA 31)

Also disturbing is that the District Court appears to have reached out artificially for a basis on which to void the leases. This suspicion is heightened when it is remembered that Judge Weinstein raised *sua sponte* the principal ground on which he held the EIS defective. The impression is confirmed when one considers the praise found in the District Court's preliminary injunction opinion for the detail of the PEIS and the EIS and the specific finding that the NEPA process had worked well. For example, that opinion noted:

"The evidentiary hearings in this court have shown no reason to believe that the Secretary has failed to adequately consider such matters as protection of antiquities in the sea, migratory birds, fish and other wildlife, and water and air pollution problems. All are

treated in great detail in the Sale 40 EIS and the EIS conclusions that no substantial problem exists was rational." (Order p. 22, JA 177)

• • •

"But, on balance, the impartial reader of the EISs is driven to the conclusion that, within the limit of reasonable researchers and writers, a studied effort was made to present a fairly grim picture of possible environmental difficulties. If anything, the studies are almost too detailed and encyclopedic for a lay executive to fully comprehend. The Final EIS Sale No. 40, together with the PDOD prepared by staff to summarize and clarify the issue for decision, satisfactorily meet both the spirit and the letter of NEPA requirements in all respects except one, addressed below. . . .

"The state and local political entities most affected were advised of the plans, their implications, and their dangers. Environmental and other groups, as well as the press, were given ample opportunity to alert and educate the public over a period of more than a year. Congress was fully advised and could at any time have taken action to abort the proposed leasing. In short, the process worked well to insure that the possible consequences of this major action in opening areas off our most populated coasts to oil and gas production was fully debated, open to political veto, and considered in depth by the Secretary and his staff as well as by other units of government." (Order pp. 31-32, JA 186-87)

Lastly, and also disturbing, is the lower court's statement that it may be empowered to create

"a coordinating and unifying organization that would integrate federal, state, local and industry planning so as to minimize adverse impacts. . . ." (Decision p. 84, JA 107)

This bears testimony to our belief that Judge Weinstein has misconceived the role of a federal judge in reviewing decisions made by the Secretary of Interior. *Kleppe v. Sierra Club*, --- U.S. ---, 96 S.Ct 2718 (1976). Moreover, as discussed in point C below the functions perceived for this "coordinating agency" are already in place. Had Judge Weinstein focused on the mandated future relationships among the federal government, state governments, local governments and industry participants, and properly applied the required standards for review of an outer continental shelf EIS, he would or should have seen that the Secretary of the Interior has fully complied with the technical and pragmatic requirements of NEPA.

B. THE DISTRICT COURT IGNORED THE "RULE OF REASON"

The legal principles governing the judicial review of federal executive decision making under NEPA are straightforward. The "rule of reason" applicable to review of a controversy under NEPA requires that an EIS

"... furnish only such information as appears to be reasonably necessary under the circumstances for evaluation of the project rather than to be so all-encompassing in scope that the task of preparing it would become either fruitless or well nigh impossible." *NRDC v. Callaway*, 524 F.2d 79, 88 (2d Cir. 1975)

The "rule of reason" merely recognizes the possible. Thus, a federal agency in preparing an EIS need not engage in a "crystal ball inquiry." *NRDC v. Morton*, 458 F.2d 827, 837 (D.C. Cir. 1972). Nor does NEPA require an agency to "foresee the unforeseeable." *Scientists Institute for Public Information v. AEC*, 481 F.2d 1079, 1092 (D.C. Cir. 1973). For this reason, the Supreme Court recently held that "appropriate allowance for the inexactness of all pre-

dictive ventures'' must be made in judging NEPA impact statements, like the one for Sale No. 40, which deal with projects that stretch out over many years and cannot now be defined with certainty. *Kleppe v. Sierra Club, supra*, at ----, 96 S. Ct. at 2727 n. 14.

Judge Weinstein would have the Secretary of Interior select years in advance of any potential development and production activity specific pipeline routes and then analyze all of these routes in light of existing state and local land use plans. This exercise would also include testing the then current receptivity to pipeline land falls of a host of states and municipalities. Such a procedure requires so much speculation as to future conditions that it would not only increase by many hundreds of pages the already mammoth EIS, but would most likely be an exercise in futility. This is precisely why the courts do not require use of a crystal ball.

**C. GIVEN THE FUTURE ACTS REQUIRED OF THE
FEDERAL GOVERNMENT, STATE AND LOCAL
GOVERNMENTS AND THE LESSEES, THE SALE 40
PEIS AND EIS SATISFY NEPA STANDARDS**

Left for the briefs of the appellants are detailed discussions of the specific ways in which the PEIS and EIS do not fail to satisfy NEPA requirements. Rather, *amici curiae* can best aid this Court by demonstrating that the District Court viewed the PEIS and the EIS from the wrong perspective. The proper perspective necessarily includes all the future relationships among the affected parties including the federal, state and local governments and the lessees such as Exxon, Gulf, Mobil and Shell. Viewing the PEIS and EIS from this perspective is not only reasonable, but is required. The Fifth Circuit in an earlier case considering an OCS lease sale in the Gulf of Mexico held:

"The [Outer Continental Shelf] sale is a unique form of federal action. It does not involve a single undertaking or a project which becomes a *fait accompli* the day the decision to proceed is made. Because it contemplates numerous successive lessor-lessee relationships involving activities over many areas and over many years, the agency's continuing opportunity for making informed adjustments has a major effect upon our evaluation of the sufficiency of the materials contained in the EIS itself." *Sierra Club v. Morton* (MAFLA), 510 F.2d 813, 828 (5th Cir. 1975)

Judge Weinstein recognized, but did not give effect to, several of the factors which will provide future protection against environmental concerns of state and local governments. First, it is obvious that the environmental concerns of the states and municipalities as to pipeline land falls and any concomitant regulatory issues will not ripen until at least three years in the future:

"Most expert opinion on the lead time between exploration and production estimates that there will be three years of exploration at a minimum before production activity can begin." (Order p. 76, JA 231)

During this period there is considerable time for interplay among the federal government, state and local governments and the lessees.

Second, Judge Weinstein noted that Department of Interior approvals of both exploration and production plans were necessary before the lessees could explore for or produce any oil or gas which they might find. (Order pp. 52-53, JA 208-09)

Third, Judge Weinstein recognized that the Department of the Interior was engaged in continuing studies and planned

"... to use this information to regulate OCS development and production through OCS operating orders, modifications of lease stipulations and various other procedural controls on the lessees' development activities." (Order p. 17, JA 172)

Although the District Court recognized some of the opportunities for future control, it did not accord them any weight. When these factors are considered, it becomes clear that the PEIS and EIS contained all the necessary ingredients for a reasoned determination to go ahead with Sale 40. It is to these factors which we now turn in detail.

1. Lease Regulation Under the Outer Continental Shelf Lands Act

The Outer Continental Shelf Lands Act, 43 U.S.C. §§ 1331 *et seq.* ("OCS Act") gives the Secretary of the Interior broad powers to control leases in the outer continental shelf. Pursuant to the OCS Act, the Secretary may grant leases containing such terms and regulations as he determines to be necessary and may prescribe and amend such rules and regulations as he determines necessary and proper to provide for the prevention of waste and the conservation of the natural resources of the outer continental shelf and the protection of correlative rights. 43 U.S.C. § 1334(a)(1). The leases granted in the outer continental shelf are explicitly subject to the regulations and any amendments. *Ibid.* In exercising his powers under the Act, the Secretary must take into account environmental considerations. *Gulf Oil Corp. v. Morton*, 493 F.2d 141, 145 (9th Cir. 1973).

Using his regulatory power, the Secretary has promulgated rules which bear directly on the future relationships among the federal, state and local governments and the Sale 40 lessees. OCS Regulations, 30 C.F.R. 250.34 (1975),

require lessees to submit development plans at least six months prior to commencement of any lease development. Prior to submission of the development plans, the lessee is required to provide a host of information to the governors of all affected states. Detailed information is required concerning location of offshore and land based facilities, the means and routes proposed to transport oil and gas to shore and the number of personnel to be engaged in onshore activity. Following receipt of this information, the states are given a period of time in which to notify the Secretary whether or not the information supplied is adequate. After a review of the adequacy of the information supplied to the states both by the states and a supervisory official of the Department of Interior, the development plan must be submitted to the affected states for review. A plan cannot be approved until the states have had time to submit comments. Substantially similar provisions relating to the exploration phase are incorporated in Lease Stipulation No. 7 (JA 2729) which is an integral part of every Sale 40 lease.

Lease Stipulation No. 4 (JA 2727) specifically enables the Secretary to require that any pipeline to be used for transporting production to shore be placed in certain designated areas or corridors. This provision was cited by the Fifth Circuit in *Sierra Club v. Morton* (MAFLA), *supra*, to support its determination that the Secretary of the Interior had sufficiently considered the issue of pipeline construction.*

*"Although recognizing that the EIS includes a general discussion of the environmental problems that would result from pipeline construction, plaintiffs complain of the absence of analysis of the effects of pipeline location and construction and the impact of pipeline leakage on particular areas. While the EIS does not include an analysis of these matters, it does include a look at long-term effects of pipeline construction generally, mitigating measures that may be employed to prevent harm from such construction, and a special lease stipulation that reserves the right to require pipelines to be placed in designated areas or corridors." *Id.* at 823.

There is no reason to believe that state and local desires concerning pipeline land falls and onshore facilities will be ignored. On the contrary, the applicable Regulations, lease stipulations and the Secretary's March 1, 1977 announcement give every indication that he will faithfully carry out his responsibilities and not willy nilly cast aside the legitimate concerns expressed by state and local governments.

There are several other lease stipulations, included in the leases pursuant to the Secretary's powers under the OCS Act, which mandate continued monitoring of possibly adverse environmental impacts. Lease Stipulation No. 1 (JA 2725) provides for constant supervision of the lease area in order to assure that no damage is done to objects of historical or archeological significance. Lease Stipulation No. 2 (JA 2726) imposes similar surveillance requirements and restraints should an area be found to be of special biological significance. Lease Stipulation No. 3 (JA 2726) requires that exploratory and development plans identify anticipated drilling and other structures including pipelines and subsea production systems and demonstrate how those structures will have the minimum practicable effect on other significant uses of the outer continental shelf, including commercial fishing.

These regulations and the Secretary's power to amend them (under lease terms such amendments become binding on the lessees) provide ample opportunities for continued adjustments to the continental shelf development program. In short, the Secretary's regulatory powers form an integral part of any analysis of an outer continental shelf environmental impact statement.

2. The Coastal Zone Management Act

The provisions of the Coastal Zone Management Act, 16 U.S.C. §§ 1451, *et seq.* ("CZMA") provide a further point of contact for continued interaction of the federal and state governments relating to development of outer continental shelf resources. All of the Mid-Atlantic states

likely to be affected by Sale 40 lease development will be covered by a CZMA program (Order p. 38, JA 194). New Jersey, for example, will submit its CZMA program for federal approval in 1977 (January 10, 1977 Trial Transcript 557-560).

A detailed explication of the CZMA is not necessary. What is important, however, is an understanding that participation in the CZMA program by the states requires development of plans for coastal zones which include "a planning process for energy facilities likely to be located in, or which may significantly affect, the coastal zone." CZMA § 305(b)(8). Possible pipeline locations are explicitly included in the planning process. CZMA § 304(5). By participating in the CZMA program, the states affected by outer continental shelf development are able to participate in the decision making process relating to pipeline landfalls and other resulting onshore activities within their boundaries.

3. Further Environmental Impact Studies

In addition to the statutory and regulatory safeguards providing for continued interaction of all the parties concerned in the exploitation of Sale 40 outer continental shelf resources discussed above, the Secretary of the Interior announced on March 1, 1977 that:

"After exploration, but prior to development, there will be an opportunity to look at and develop an environmentally sound procedure for the removal of the resource. . . . I intend to require the preparation of an environmental impact statement prior to approving development plans for [Sale 40] leases."

The EIS specifically indicated that supplemental impact statements on the development/production phase might be used to assess industry development plans (III EIS 44).

Conclusion

The District Court improperly deprecated the past, misinterpreted the present and required too much of the future. It gave no credit to the long, thoughtful and public process which led to the EIS and the Secretary's decision, applied incorrect standards in judging the adequacy of the EIS and the propriety of that decision and ultimately based its conclusion on a requirement of speculative guesswork rather than reasonable forecasting protected by continued supervision. The order appealed from should be reversed.

Dated: New York, New York
March 25, 1977

Respectfully submitted,

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APPENDIX TO THE BRIEF

A-1

Affidavit of Robert L. Clare, Jr.

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

SECRETARY OF THE INTERIOR, ET AL.,

Appellants,

v.

COUNTY OF SUFFOLK, ET AL.,

appellees.

No. 77-6049

AFFIDAVIT IN SUPPORT
OF MOTION FOR LEAVE
TO FILE A BRIEF OF
AMICI CURIAE

STATE OF NEW YORK }
COUNTY OF NEW YORK } ss.:

ROBERT L. CLARE, JR., being duly sworn, deposes and
says:

1. I am a member of the firm of Shearman & Sterling, attorneys for applicants Exxon Corporation, Gulf Oil Corporation, Mobil Oil Corporation and Shell Oil Company, and I submit this affidavit in support of the motion pursuant to Federal Rule of Appellate Procedure 29 for an Order granting applicants leave to file the accompanying brief as *amici curiae*.

2. The lease sale held by the Secretary of the Interior on August 17, 1976, one day after this Court stayed the preliminary injunction which Judge Weinstein had granted to prevent the sale, resulted in total bonus payments in excess of \$1.1 billion which has now been deposited in the U. S. Treasury. Of that sum, the applicants herein, in some instances in conjunction with other bidders, have made bonus payments in excess of \$900 million. In addition the applicants have incurred pre- and post-lease acquisition

Affidavit of Robert L. Clare, Jr.

expenses in excess of \$38 million. Beyond the enormous monetary consequences of Judge Weinstein's order cancelling the sale some six months after it was conducted and four months after this Court reversed Judge Weinstein's grant of a preliminary injunction, is the fact that valuable time is now being lost, irretrievably, each day the exploration for vitally needed new sources of oil and natural gas in the mid-Atlantic range of the Outer Continental Shelf is delayed. The interests of the *amici curiae* are thus substantial, direct and linked to the broader national concern for continued exploration for additional sources of oil and natural gas. It is therefore desirable for the Court to grant the motion herein and accept the accompanying brief of the *amici curiae* in order to have the benefit of the views of a substantial portion of the business community which serves the nation's growing demand for energy.

3. The affidavits of C.C. Garvin, Lewis A. Ramsey, William Tavoulareas and John F. Bookout, attached hereto as Exhibits 1 through 4 respectively, set forth in greater detail the interests of the *amici curiae* and the reasons why a brief of the *amici curiae* herein is desirable.

WHEREFORE, I respectfully request that this Court grant the motion and allow the accompanying brief of *amici curiae* to be filed herein.

ROBERT L. CLARE, JR.
ROBERT L. CLARE, JR.

Sworn to before me this
24th day of March, 1977.

GILBERT H. BLEICH

Notary Public

GILBERT H. BLEICH
Notary Public, State of New York
No. 31-0318850
Qualified in New York County
Certificate filed in New York County
Commission Expires March 30, 1977

Affidavit of C. C. Garvin, Jr.

UNITED STATES COURT OF APPEALS

FOR THE SECOND CIRCUIT

SECRETARY OF THE INTERIOR, *et al.*,

Appellants

v.

COUNTY OF SUFFOLK, *et al.*,

Appellees.

No. 77-6049

AFFIDAVIT IN SUPPORT
OF MOTION FOR LEAVE
TO FILE A BRIEF OF
AMICI CURIAE

C. C. GARVIN, JR., being duly sworn, deposes and says:

1. I am Chairman of the Board and Chief Executive Officer of Exxon Corporation. I make this affidavit in support of the motion by Exxon and three other companies to file a brief as amici curiae in appeal of Judge Weinstein's order declaring null and void the Outer Continental Shelf oil and gas leases in the mid-Atlantic region's Sale 40 area.

2. Exxon made bids on 69 of the 154 tracts in the Sale 40 area and was successful on 30 of those bids. It has thus far made bonus and rental payments of \$343,000,000 on those tracts. Additionally, Exxon has incurred pre- and post-acquisition expenses of \$16,000,000 in the combined North and mid-Atlantic regions.

3. Total domestic oil production has been declining each year since 1972. Unfortunately, United States natural gas production has been doing the same thing. As a nation we are currently producing only 52% of the liquid petroleum products we are using and the percentage is declining. We

Affidavit of C. C. Garvin, Jr.

and the rest of the world are consuming more oil and gas each year than is being found. The nation's growing need for foreign sources of petroleum products places increased reliance on decisions made by OPEC countries.

4. The effects of the energy shortage in the Northeast this past winter including the closing of the schools, plants and the layoff of workers forcefully demonstrate that sufficient and dependable energy supplies are needed to sustain social and economic growth. Since the energy consuming public in the United States depends on the petroleum industry to continue the search for new sources of fossil fuels, including those located in the Outer Continental Shelf area, it would be desirable for this Court to grant our motion and accept the brief of the amici curiae. In that fashion we may state our views regarding what we believe to be the fundamentally erroneous conclusion by Judge Weinstein from the unique vantage point of those who are attempting to respond to the ever increasing demand for energy.

5. In coming to grips with new energy requirements, reasonable and balanced policy considerations are required. Development of entirely new energy sources such as nuclear fusion or solar energy is not an alternative to more intensive exploration for conventional sources now. Both are essential. Adequately protecting our environment is not an alternative to extracting fossil fuels from the earth. Rather both can and must be accomplished.

6. Unfortunately, there is no way to buy more time to deal with our nation's energy problems. We can only lose more time. To assure adequate supplies to sustain our economy the nation must accelerate exploration for conventional oil and gas reserves, especially in the Outer Continental Shelf since it presents one of the most important

Affidavit of C. C. Garvin, Jr.

potential sources for new energy supplies. We at Exxon believe that the Sale 40 tracts were leased by the Department of Interior in full recognition of the urgency which it attaches to the exploration for vital energy supplies, and of the importance of the total environmental impact that full development of such leases would have locally, regionally and nationally. Each day that we are prevented from proceeding with the exploration of leases in the Sale 40 area is another day in which the United States will become more dependent on foreign imports of oil and gas.

7. On March 1, 1977 Secretary of the Interior, Cecil D. Andrus announced that he believed an expedited appeal of Judge Weinstein's order was in the public interest. We share the Secretary's belief that a quick resolution of the case is also necessary to protect the Federal interests and the rights of the lessees. It is our firm belief that the ongoing authority of the Department of Interior over the leases, together with the lease stipulations, will insure proper environmental safeguards. We also believe the Department of Interior's and Exxon's policies of adherence to the myriad federal, state and local laws and ordinances which are applicable is preferable to the drastic, and, we submit, unjustified step taken by Judge Weinstein in setting aside the lease sale.

C. C. GARVIN, JR.

C. C. GARVIN, JR.

Sworn to before me this 23rd
day of March, 1977

ELIZABETH M. QUENTIN

Notary Public

My Commission Expires April 30, 1979

[NOTARIAL SEAL]

Affidavit of Lewis A. Ramse
UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

SECRETARY OF THE INTERIOR, ET AL.,

Appellants,

v.

COUNTY OF SUFFOLK, ET AL.,

Appellees.

No. 77-6049

AFFIDAVIT IN SUPPORT
OF MOTION FOR LEAVE
TO FILE A BRIEF OF
AMICI CURIAE

STATE OF TEXAS }
COUNTY OF HARRIS } ss.:

LEWIS A. RAMSEY, being duly sworn, deposes and says:

1. I am President of Gulf Energy & Minerals Company -U.S., a division of Gulf Oil Corporation. I make this affidavit in support of the motion by Gulf and three other companies, Exxon Corporation, Shell Oil Company and Mobil Oil Corporation to file a brief as amici curiae in the appeal of Judge Weinstein's order declaring null and void the outer-continental shelf oil and gas leases in the mid-Atlantic region's Sale 40 area.

2. As a result of the August 17, 1976 federal lease sale of tracts on the Mid-Atlantic Outer Continental Shelf (OCS Sale No. 40), Gulf was awarded an interest in three tracts and subsequently acquired from other successful bidders an interest in seven additional tracts. The total bonus paid for those 10 tracts was \$105,067,008 and Gulf's interest in those tracts ranged from 18.375% to 50%. To date, Gulf has incurred related pre- and post-acquisition expenses of 2.3 million dollars.

Affidavit of Lewis A. Ramsey

3. Exploration of the leases awarded at the August 17 sale is vital to the economic well-being of the United States. Exploration of acreage on the Outer Continental Shelf is the most realistic and effective method of ameliorating the energy shortages of the United States and the world economic and political problems which have accompanied the shortages. The tracts leased at the August 17 sale represent a frontier area which would provide significant new prospects to bolster the country's declining reserves and production capacity. The United States can no longer rely on developing only the Gulf of Mexico. Those reserves are not sufficient and indications are that fewer and fewer sizeable reserves will be discovered. Hydrocarbons must be produced from new prospects in order to provide the country the additional energy it so desperately needs. Exploration for new sources of oil and natural gas in the mid-Atlantic range of the Outer Continental Shelf has now been precipitously stopped by the order cancelling the lease sales. We believe it would be desirable for this Court to grant our motion to file a brief *amici curiae* so that we may state the views of those most directly affected by the order and, at the same time, describe the broader economic impact of the cancellation upon the energy consuming public whose growing demand for oil and natural gas must be met.

4. This country's production of oil and gas has declined significantly in recent years, but its demand for energy is expected to continue upward. One result is that crude oil and petroleum product imports during 1977 are running some 33% higher than last year and 28% higher than during 1975, according to Federal Energy Administration (FEA) statistics released earlier this year. The economic effects and political implications of the massive dollar drain from the United States to the oil producing governments caused by our increasing dependence on Middle East oil are only part of the problem. The most intolerable consequence of

Affidavit of Lewis A. Ramsey

our increasing shortage of domestic energy production is the untold human suffering caused by the layoff of between 1.2 million and 1.5 million workers when numerous plants closed this winter for lack of natural gas. The FEA has already been forced to decrease its forecast of oil and gas production based on revised OCS leasing schedules and more realistic estimates of the time lags between discovery and full production. Unless the United States reduces its reliance on imported oil by immediately taking steps to increase exploration for its domestic offshore potential sources of supply, the American economy will continue to be adversely affected and vulnerable to politically-inspired embargoes, and the American people will remain subject to the economic hardship of declining domestic oil and natural gas supplies whose importance was recently emphasized by the impact of the recent unpredictably severe winter weather.

For these reasons, I believe that consideration of the views of the amici curiae in an immediate review of the order cancelling the lease sales of the tracts awarded as a result of the August 17 lease sale is in the public interest and a matter of national urgency.

LEWIS A. RAMSEY
LEWIS A. RAMSEY

Sworn to and subscribed before me this 22nd day of March, 1977.

BARBARA P. BROWNE
Notary Public

BARBARA P. BROWNE
Notary Public in and for Harris County, Texas
My Commission Expires March 15, 1978

Affidavit of William P. Tavoulareas
UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

SECRETARY OF THE INTERIOR, ET AL.,

Appellants,

v.

COUNTY OF SUFFOLK, ET AL.,

Appellees.

No. 77-6049

AFFIDAVIT IN SUPPORT
OF MOTION FOR LEAVE
TO FILE A BRIEF OF
AMICI CURIAE

WILLIAM P. TAVOULAREAS, being duly sworn, deposes and says:

1. I am President of Mobil Oil Corporation. I make this affidavit in support of the motion by Mobil and three other companies, Exxon Corporation, Shell Oil Company and Gulf Oil Corporation to file a brief as amici curiae in the appeal of Judge Weinstein's order declaring null and void the outer-continental shelf oil and gas leases in the mid-Atlantic region's Sale 40 area.

2. The total bonus payments for all lease tracts on which bids were accepted by the Secretary of the Interior were in excess of \$1.1 billion. Mobil, along with certain other companies, made bids which were accepted on 8 of the 154 tracts in the Sale 40 area. The total bonus paid for those 8 tracts was \$274,087,450 and Mobil's interest in those tracts ranged from 20% to 46%. To date, Mobil has incurred related pre- and post-acquisition expenses of approximately \$9,000,000.

3. It would be desirable, we submit, for the Court to grant our motion and accept the brief of the amici curiae

Affidavit of William P. Tavoulaareas

so we may state the views of those who are most directly affected by Judge Weinstein's unprecedented order cancelling the Sale. We believe we are in a unique position, as members of an industry called upon to serve the ever growing demand in the United States for oil and natural gas from decreasing sources of supply, to describe the serious impact this cancellation order will have upon the citizens and the economy of this country.

4. Continued exploration for new sources of supply of oil and natural gas is one of the most vital aspects of any comprehensive energy policy. The outer-continental shelf, including the mid-Atlantic range which was the subject of the now cancelled Sale No. 40, is considered to be one of the promising frontier areas for such exploration. The onshore area in the United States is one of the most thoroughly explored oil provinces in the world. The lower 48 states is an area of declining production. Of the 10 largest onshore fields currently producing in the lower 48 states, only one has been found since 1936. Yet the demand for energy sources in the United States, the availability of which is directly linked to our continued economic growth, increased by 4.8% in 1976 as estimated by the Department of Interior, Bureau of Mines—more than in any year since the 1973-74 embargo. That embargo, coupled with the severe economic impact from the natural gas shortages of the unusually cold winter we have just experienced, amply demonstrates the urgent need for exploration of all potential sources of domestic oil and natural gas supplies.

5. We at Mobil believe that the Secretary of the Interior amply considered the relevant environmental and economic factors in offering lease tracts in the Sale 40 area. We are mindful of the terms and conditions of the lease agreements

Affidavit of William P. Tavoulareas

into which we and other companies have entered for these tracts, particularly insofar as they provide for (a) continuing control by the federal government as lessor of any pipeline rights-of-way and (b) submission by the lessees to the Governors of the States of New York, New Jersey, Pennsylvania, Delaware, Maryland and Virginia of information necessary to assist them in planning for the impact of activities during exploration under the leases. We are also mindful of Interior regulations requiring the submission of development plans to the Governors of affected states and the announcement by the Secretary of the Interior, Cecil D. Andrus, on March 1, 1977, that he intends to require further environmental studies prior to approving development plans for these leases. Whatever the most appropriate and legally permissible form for continuing administrative supervision and review of the exploration and, ultimately, the development phase of activity in the Sale 40 area may be, we believe the extremely damaging impact of the cancellation of the lease sales should be reviewed immediately.

6. If the order by Judge Weinstein is upheld, in addition to delaying, substantially, the urgent process of exploration for new domestic oil and gas supplies, it will virtually destroy the secret bidding procedure statutorily mandated for offshore lease sales. The bids submitted are now public knowledge and, therefore, competitive evaluations have been made of the proprietary information upon which such bids were based. Consequently, any new lease sale, which would otherwise result from Judge Weinstein's order, cannot be conducted in the manner envisaged by the controlling statute.

7. The moratorium on all exploration activities in the Sale 40 area announced by Secretary Andrus on March 1,

Affidavit of William P. Tavoulareas

1977 as a result of Judge Weinstein's order cancelling the lease sales underscores the urgency which attaches, we believe, to an immediate review of that order and the need for the Court to consider the views of all who have been adversely affected by that order, including the amici curiae herein. The lessees in OCS Sale 40 have paid in excess of \$1.1 billion in bonus payments for leases upon which operations cannot be conducted. While the potential interest upon this \$1.1 billion is substantial, of greater importance is the loss or delay in exploring for vitally needed new sources of oil and natural gas.

WILLIAM P. TAVOULAREAS
WILLIAM P. TAVOULAREAS

Sworn to before me this 22nd
day of March, 1977.

IRIS N. OTERO
Notary Public

IRIS N. OTERO
Notary Public, State of New York
No. 41-4629652
Qualified in Queens County
Term Expires March 30, 1978

Affidavit of John F. Bookout

STATE OF TEXAS }
COUNTY OF HARRIS }

BEFORE ME, the undersigned authority, duly commissioned and qualified within and for the State and County aforesaid, personally came and appeared John F. Bookout who, being by me first duly sworn, deposed and said:

(1) He is the President and Chief Executive Officer of Shell Oil Company. Shell Oil Company was organized under the laws of the State of Delaware and has its principal office in Houston, Texas. Shell Oil Company, herein referred to as "Shell", is extensively engaged in the United States in the exploration for and production of oil, gas and other hydrocarbon minerals, and in the refining, manufacturing and marketing of such hydrocarbons and the products thereof, including chemical products. Shell has been heavily involved in exploring and developing oil and gas in Federal submerged lands of the United States Outer Continental Shelf, and relies to a large extent on production from the Outer Continental Shelf, having acquired in the past approximately 222 leases of submerged lands at a cost of about \$900,000,000 and having paid the Federal Government approximately \$468,000,000 in royalties on the production from such leases. In 1975 Shell's offshore production amounted to some 24% of its total oil production and 34% of its gas production.

(2) Shell and certain other parties were joint bidders for oil and gas leases offered at the Mid-Atlantic Outer Continental Shelf lease sale held in August of 1976 (OCS Lease Sale #40), Shell being the larger interest bidder in the group. Shell and its co-bidders acquired at said lease sale by competitive bidding twelve leases, for which they paid the government a total of \$183,400,000 in lease bonus.

(3) Shell put forth extensive effort and expense in exploring the Atlantic offshore in anticipation of the Lease

Affidavit of John F. Bookout

Sale #40, and expended at least \$10,500,000 in preparing for the lease sale, which includes expenditures for seismic surveys and core drilling and stratigraphic testing in the Mid-Atlantic area, and extensive data processing and geological and geophysical staff work for necessary interpretation of the seismic data secured and selecting tracts for bidding. Shell will drill and produce the leases acquired at Lease Sale #40 as operator for itself and its co-bidders, and in preparation for drilling and development of the leases Shell has acquired a lease for an onshore base at Davisville, Rhode Island, from the Rhode Island Port Authority and Economic Development Corporation, has had special equipment fabricated for these operations and has under contract a floating drilling rig which it intends to use in drilling its test wells on the leases acquired at the sale. Shell has expended about 62 man-months in preparation for such drilling.

(4) The voiding of Lease Sale #40 would mean the loss to Shell and its partners of the considerable sums expended in exploratory and geophysical work in preparation for the sale and the monies expended since in preparation for drilling, and would require recovery of the \$183,400,000 paid by Shell and its co-bidders as lease bonus, said monies having been deposited in the United States Treasury, an uncertain procedure which would at least result in a financial burden from the loss of the value and use of such bonus monies while in the United States Treasury. Finally, the voiding of such lease sale would destroy entirely the competitive position of Shell and its co-bidders and all other parties who acquired Mid-Atlantic leases, at future bidding for the tracts when again offered at the sale, since the companies' valuations of the tracts would then be known to all.

(5) As shown, Shell and all others who acquired leases at Lease Sale #40 would be severely and detrimentally affected should the lease sale be voided. Also, voiding the

Affidavit of John F. Bookout

lease sale would be a disservice to the overriding interest of the United States public, including Shell and its co-lease holders. As is known, the United States is extensively, and ever increasingly, dependent upon foreign-produced oil and gas for its energy needs. According to the American Petroleum Institute, in February of 1977 the United States imported 9.6 million barrels per day of crude oil and products, amounting to 47.6% of the total United States daily petroleum energy needs. Since 1971 the Nation's dependence upon foreign-produced oil, as reported by the Independent Petroleum Association of America, rose from 29.8% of the Nation's needs to the present level, an increase of some 17% in five years. This trend can be reversed only by finding and developing new reserves domestically, and the United States Outer Continental Shelf is the prime area in the search for new reserves. Cancellation of Lease Sale #40 would be a step in the wrong direction if this country intends to decrease its reliance on foreign oil. The extreme weather experienced in this country in the winter just past amply demonstrates the pressing need to find and develop new and additional domestic oil and gas reserves. According to Citibank of New York, there were about two million people in the United States out of work in January of this year as a direct result of the closing of factories and businesses caused by the shortage of fuel. There were extensive closings of schools and other disruptions directly resulting from fuel shortage. Exploring and developing the frontiers in the Outer Continental Shelf is a necessity if the country is to be assured of adequate fuel in the winters to come. Additionally, the voiding of Lease Sale #40 would, notwithstanding good faith effort on the part of the Department of Interior to assess environmental impacts in accordance with the requirements of law, undermine the integrity of the competitive leasing processes of the Outer Continental Shelf Land Act by planting doubt in every potential bidder's mind as to the certainty of lease-

Affidavit of John F. Bookout

hold and development rights that might be acquired in future lease sales. The investment of the manpower and large sums of money necessary for the development of our Outer Continental Shelf requires a reasonable assurance that such investment will not be made in vain.

JOHN F. BOOKOUT
JOHN F. BOOKOUT

SWORN TO AND SUBSCRIBED before me this 21st day of March, 1977.

ROSEMARY P. McHUGH
Notary Public in and for
Harris County, Texas

ROSEMARY P. McHUGH
Notary Public In And For Harris County, Texas
My Commission Expires June 1, 1977



<u>Name</u>	<u>Address</u>	<u>Attorney for</u>
Francis J. Doran, Esq.	Town Attorney Town of North Hempstead Town Hall 220 Plandome Road Manhasset, N.Y. 11030	
Joseph Colby, Esq.	Town Attorney Town of Oyster Bay Town Hall Audrey Avenue Oyster Bay, N.Y. 11771	
Anthony R. Corso, Esq.	Board of Trustees Town of Huntington Town Hall 227 Main Street Huntington, N.Y. 11743	
Warren H. Gunther, Esq.	117 Montague Street Brooklyn, N.Y. 11201	Intervenor- Defendant New York Gas Group
F. Peter O'Hara, Esq.	117 Montague Street Brooklyn, N.Y. 11201	Intervenor- Defendant New York Gas Group
George A. Burrell, Esq.	220 Fifth Avenue New York, N.Y. 10001	Intervenors- National Ocean Industries Association
E. Edward Bruce & Robert J. Pope, Esqs. Covington & Burling	888 Sixteenth Street, N.W. Washington, D.C. 20006	Intervenors- National Ocean Industries Association
William M. Meyers & Gene W. Lafitte J. Berry St. John, Jr., Esqs. Liskow & Lewis	225 Barone Street New Orleans, La. 70112	Intervenors- National Ocean Industries Association
William F. Dudine, Esq.	405 Lexington Avenue New York, N.Y. 10017	For Concerned Citizens of Montauk, Inc.
Rosenman Colin Freund Lewis & Cohen, Esqs.	574 Madison Avenue New York, N.Y. 10022	For Amicus Curiae, Association for a Better New York, Inc.

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<u>Name</u>	<u>Address</u>	<u>Attorney for</u>
Vinson & Elkins, Esqs.	1701 Pennsylvania Avenue, N.W. Washington, D.C. 20006	The Business Roundtable
Willcox, Pirozzolo & McCarthy	50 Federal Street Boston, Mass. 02110	Amicus Curiae New England Council
Baker & Botts, Esqs.	1701 Pennsylvania Avenue, N.W. Washington, D.C. 20006	NL Industries, Inc.
David J. Muchow, Esq.	1515 Wilson Boulevard Arlington, Va. 22209	
David G. Trager, Esq.	United States Attorney Eastern District of New York 225 Cadman Plaza East Brooklyn, N.Y. 11201	

Sworn to before me this
15th day of April, 1977.

Gubert H. Bleich

Joanne Walegir
Joanne Walegir

GILBERT H. BLEICH
Notary Public, State of New York
No. 31-0318850
Qualified in New York County
Commission Expires March 30, 1979

AFFIDAVIT OF SERVICE
BY MAIL

STATE OF NEW YORK)
: SS:
COUNTY OF NEW YORK)

Joanne Walegir being duly sworn,
says: that I am over the age of eighteen years and am not
a party herein, and that on the 15th day of April ,
1977, I served a true copy of the within Amici Curiae
Brief of Exxon Corporation, Gulf Oil Corporation, Mobil
Oil Corporation, and Shell Oil Company
upon the attorneys hereinafter named at the places herein-
after stated and set opposite their respective names by
depositing the same, properly enclosed in a post-paid,
properly addressed wrapper, in an official depository under
the exclusive care and custody of the United States Post
Office Department at Wall and William Streets
within the City and State of New York, directed to said
attorneys at their respective addresses given below, which
were designated by them for that purpose upon the preceding
papers in this action, to wit:

<u>Name</u>	<u>Address</u>	<u>Attorney for</u>
Jon M. Kaufman, Sarah Chasis & Robert Stover, Esqs.	c/o Kommel, Rogers, Kaufman, Lorber & Shenkman 380 Madison Avenue New York, N.Y. 10017	Natural Resources Defense Council, Inc.
Irving Like, Esq.	200 West Main Street Babylon, N.Y. 11702	County of Suffolk
John Picciano, Esq.	c/o County Attorney's Office County of Nassau Executive Building One West Street Mineola, N.Y. 11501	
Francis G. Caldeira, Esq	Town Attorney Town of Islip Town Hall Islip, N.Y. 11751	
W. Kenneth Chave, Jr., Esq.	Town Attorney Town of Hempstead Front Street Hempstead, N.Y. 11550	

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THE SECRETARY OF THE ARMY

WASHINGTON, D. C.

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